

### **REMARKS**

Claims 1-136 are pending. Claims 66-116 are withdrawn from consideration. New claims 137-139 are added. Claims 1, 2, 15, 60, 117, 124, 127, 131, and 132 are amended. The amendments to the claims find support in the specification at least on page 90, lines 3-23, and Figure 21. Claims 65, 121, 122, and 130 are cancelled. No new matter has been introduced. Reconsideration and allowance of all the pending claims in view of the above amendments and the remarks that follow are respectfully requested.

#### **Allowable Subject Matter**

Applicants thank the Examiner for indicating the claims 23, 24 and 27 are allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 23, 24 and 27 have been rewritten as independent claims 137-139. Allowance of these claims is respectfully requested.

#### **Double Patenting**

Claims 32-59 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-23, 25-28 and 32 of U.S. Patent No. 5,600,364 for reasons stated on pages 2-6 of the Office Action. Applicants have enclosed a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome the rejection. Allowance of claims 32-59 is respectfully requested.

#### **Rejections under 35 U.S.C. § 102**

Claims 1, 7-12, 15-18 and 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,003,384 to Durden et al. (hereinafter Durden) for reasons stated on pages 7-9 of the Office Action. Applicants respectfully traverse the rejection.

For anticipation under 35 U.S.C. § 102, the reference "must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." (MPEP § 706.02). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. Verdegaal Bros. v. Union Oil Co. Of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps

Clinic Research & Foundation v. Genentech Inc., 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

Durden generally describes an impulse pay-per-view system capable of gathering viewing information from subscribers. Durden, however, does not disclose storing the programs watched data as a programs watched matrix, as disclosed in the amended independent claims 1 and 15. The examiner alleges that Durden describes a programs watched matrix having a dimension of at least 1, and cites col. 9, lines 7-54, and col 5, lines 11-40 of Durden. Applicants respectfully disagree. Although the term “matrix” can be used in different settings with different meanings, the meaning of the term “matrix” in the present invention is clear in view of the specification and Figure 21. Applicants respectfully submit that the meaning of the term “matrix,” as used in the present invention, is best described by the definition given in the American Heritage College Dictionary (3<sup>rd</sup> Edition), i.e., a “matrix” is “a rectangular array of numerical or algebraic quantities subject to mathematical operations” or “something resembling such an array, as in the regular formation of elements into columns and rows.” Based on this definition, a “matrix” has to have at least two dimensions to form a “rectangular array,” as shown in Figure 21.

In col. 9, lines 7-54, Durden describes the telephone net work interface between each IPPV module and the system manager, as well as the data transmission and storage between IPPV module and the system manager. Durden does not teach or suggest a programs watched matrix in these descriptions.

In col. 5, lines 11-40, Durden describes that the system manager will maintain a table of viewing statistics in memory. Applicants respectfully submit that a “table of viewing statistics” is not the equivalent of a “programs watched matrix,” as understood by a person of ordinary skill in the art.

Accordingly, Applicants respectfully submit that Durden does not teach every aspect of the inventions recited in claims 1 and 15. Therefore, independent claims 1 and 15 are not anticipated by Durden. Applicants further submit that claims 7-12, 16-18, and 22 are allowable because they depend from allowable claims 1 and 15, respectively, and for the additional features they recite. Withdrawal of the rejection of claims 1, 7-12, 15-18 and 22 under 35 U.S.C. §102(b) is respectfully requested.

Claims 1, 13, 60, 117-120, 125-130, 135 and 136 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,251,324 to McMullan (hereinafter McMullan) for reasons stated on pages 9-11 of the Office Action. Applicants respectfully traverse the rejection.

McMullan describes a method and apparatus for generating and collecting viewing statistics in a cable television system. McMullan, however, fails to disclose processing, arranging, or storing the programs watched data as a programs watched matrix, as disclosed in independent claims 1, 60, 117, and 127. Accordingly, Applicants respectfully submit that McMullan does not teach every aspect of the invention claimed in claims 1, 60, 117, and 127. Therefore, independent claims 1, 60, 117, and 127 are not anticipated by McMullan. Applicants further submit that claims 13, 118-120 and 125-126, 128-130 and 135-136 are allowable because they depend from allowable claims 1, 117, and 127, respectively, and for the additional features they recite. Withdrawal of the rejection of claims 1, 13, 60, 117-120, 125-130, 135 and 136 under 35 U.S.C. §102(e) is respectfully requested.

#### **Rejections under 35 U.S.C. § 103**

Claims 14, 25, 26, and 28-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Durden and McMullan for reasons stated on page 11-15 of the Office Action. Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness the prior art reference (or references when combined) must teach or suggest all of the claim limitations. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and MPEP § 2142). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claim 14 depends from allowable claim 1. Claims 25-26 and 28-30 depend from allowable claim 15. For this reason and the additional features they recite, claims 14, 25, 26, and 28-30 are also allowable. Withdrawal of the 35 U.S.C. 103(a) rejection to claims 14, 25, 26, and 28-30 is respectfully requested.

Claims 2-6, 19-21, and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Durden for reasons stated on pages 12-13 of the Office Action. Although the claims are rejected over Durden, the Office Action cites McMullan as grounds for the rejection of claims 2-6 and 19-21. Applicants thus assume that these claims are rejected over McMullan and Applicants respectfully traverse the rejection.

Claims 2-6 depend from allowable claim 1. Claims 19-21 depend from allowable claim 15. As disclosed earlier, claims 1 and 15 are not rendered obvious by McMullan. Accordingly, claims 2-6 and 19-21 are not obvious over McMullan. Claim 31 is rejected over Durden. Claim 31 depends from allowable claim 15. As discussed earlier, claim 15 is not rendered obvious by Durden. Accordingly, claim 31 is not obvious over Durden. Withdrawal of the 35 U.S.C. 103(a) rejection to claims 12-6, 19-21, and 31 is respectfully requested.

The Examiner takes Official Notice that it is well known in the art to collect programs watched data in a table arrangement (columns and rows) for the advantage of providing a more precise measurement of the programs watched for statistical analysis. Applicants respectfully submit that a table arrangement that is used for statistical analysis is different from a matrix for storage of data. Accordingly, it is not obvious to one skilled in the art to modify McMullan's system to store the programs watched data in a matrix form. Furthermore, Applicants request that the Examiner provide a specific reference for the proposition that collecting programs watched data in a table arrangement is well known in the art.

Claims 61-64 depend from claim 60. Claims 121-124 depend from claim 117. Claim 131-134 depend from claim 127. Applicants respectfully submit that McMullan does not teach or suggest processing, arranging, or storing the programs watched data as a programs watched matrix, as disclosed in independent claims 60, 117, and 127. Accordingly, claims 60, 117 and 127 are not rendered obvious by McMullan.

Applicants respectfully submit that claims 61-64, 121-124 and 131-134 are allowable because they depend from allowable claims 60, 117, and 127, respectively, and because they recite additional patentable subject matter. Withdrawal of the 35 U.S.C. 103(a) rejection to claims 61-64, 121-124 and 131-134 is respectfully requested.

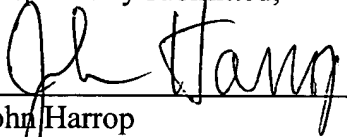
### **Conclusion**

For at least the reasons set forth above, applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance of the claims are earnestly solicited.

Should the Examiner believe that anything further is desired in order to place the application in even better condition for allowance, the Examiner is invited to contact applicants' undersigned representative at the telephone number listed below.

Date: **January 21, 2004**

Respectfully submitted,



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